Remarks/Arguments:

These remarks are presented in response to the Office Action dated March 21, 2007. Applicants respectfully request reconsideration of the application. Claims 1-8 are pending in the application, and stand rejected at present.

Claims 1-8 are rejected under 35 U.S.C.103(a) as being unpatentable over Parlar et al. (USP 6,631,764) in view of Fischer et al. (USP 3,753,903). Examiner has cited that basis for this rejection is the emulsion solution of Parlar et al. in view of Fischer et al. is that which is recited in claim 1, and therefore would present a shoulder peak before the monomer peak when analyzed by gel permeation chromatography and wherein the stability of the brine-in-oil emulsion is proportional to the height of the shoulder peak relative to the monomer peak. Applicants traverse.

Applicants are claiming a method using a composition consisting of gravel and a brine-in-oil emulsion carrier fluid, where selection of the brine-in-oil forming emulsifier is limited to a sorbitan fatty acid ester emulsifier is based upon the ratio of the shoulder peak relative to the monomer peak when analyzed by gel permeation chromatography. The combination does disclose, or suggest, selecting the emulsifier based upon the shoulder peak relative to the monomer peak. Applicants also believe the phrase "would present", a viewpoint from the perspective of hindsight, is not remotely equivalent to the term, nor does it teach, "selection".

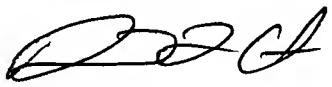
Examiner has also based the rejection on inherency. Applicants respectfully point out that inherency of a claimed element of the invention is immaterial for purposes of a obvious rejection. That which is inherent in the prior art, if not known at the time of the invention, cannot form a proper basis for rejecting the claimed invention as obvious under 35 U. S. C. 103(a). See In re Shetty, 566 F.2d 81, 86, 195 U.S.P.Q. 753, 756-57 (C.C.P.A. 1977), See also In re Naylor, 369 F.2d 765, 768, 152 U.S.P.Q. 106, 108 (C.C.P.A. 1966) ("[Inherency] is quite immaterial if . . . one of ordinary skill in the art would not appreciate or recognize the inherent result."); In re Rijckaert, 9 F.3d 1531, 1533, 28 U.S.P.Q.2d 1955, 1957 (Fed. Cir. 1993). Quoting from In re Spormann, 363 F.2d 444, 448, 150 U.S.P.Q. 449, 452 (C.C.P.A. 1966), the court stated:

> [T]he inherency of an advantage and its obviousness are entirely different questions. That which may be inherent is not necessarily known. Obviousness cannot be predicated on what is unknown.

Combining the teachings of Parlar et al. with those of Fisher et al. would not result in the invention as claimed by applicants. Hence, Applicant submits that the rejection does not have proper basis and withdrawal thereof is in order. As such, the invention as claimed is non-obvious over the combination of references.

Applicants believe the claims are in condition for allowance. If the Examiner believes that the prosecution of the application would be facilitated by a telephone interview, Applicants invite the Examiner to contact the undersigned at 281-285-8606. The Commissioner is hereby authorized to charge any fees that may be required, or credit any overpayment, to Deposit Account No. 04-1579 (56.0773).

Respectfully submitted,



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